

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Committee:		Kauaʻi Police Commission	Meeting Date	April 22, 2016
Location	Moʻikeha Building – Meeting Room 2A/B		Start of Meeting: 9:00 a.m.	End of Meeting: 10:55 a.m.
Present	Chair Charles C.C. Iona; Vice-Chair Mary K. Hertog; Commissioners: Catherine Adams, Savita Agarwal, Gerald (Chip) Bahouth and Kevin Mince Also present: Board & Commissions Office Staff: Support Clerk Mercedes Omo; Deputy County Attorney Mahealani Krafft; Police Department: Assistant Chiefs Roy Asher and Robert Gausephol.			
Excused	Commissioner Donald (Moki) Okami Sr.			
Absent				
SUBJECT	DISCUSSION		ACTION	
Call To Order	Prior to the start of the meeting, Assistant to the County Clerk Eddie Topenio gave the Oath of Office to new Commissioner Catherine Adams. Chair Iona stated that due to an emergency at work, Commissioner Okami will not be attending the meeting. Chair welcomed new Commissioner Catherine Adams to the Police Commission. Chair Iona announced that Chief Perry is off island attending a conference and will not be attending the meeting, and filling in for him is Assistant Chief Roy Asher.		At 9:00 a.m. Chair Iona called the meeting to order with six (6) Commissioners present constituting a quorum.	
Approval of Minutes	Regular Open Session Minutes of March 18, 2016. With no corrections to the meeting minutes, Chair Iona called for a motion to approve the meeting minutes of March 18, 2016.		Commissioner Mince moved to approve the meeting minutes of March 18, 2016. Commissioner Bahouth seconded the motion. Motion carried 6:0.	
Employees of the Month for April – KPD’s Vice Unit	Assistant Chief Asher explained that because of the type of work the vice unit performs, the department normally does not recognize the individuals at the Police Commission meetings; however, the individuals will be recognized internally at the department’s general meeting.			

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Commendation Report	<p>There was one letter of commendation received involving eight (8) personnel in the Kaua‘i Police Department.</p> <p>On April 5, 2016, Chief Perry wrote to commend Deputy Chief Michael Contrades, Assistant Chiefs Roy Asher and Robert Gausephol, Acting Assistant Chief Richard Rosa, Captains Paul Applegate and Bryson Ponce, Acting Captain Scott Brede and KPD’s Fiscal Manager Daurice Arruda, for their dedication and commitment in preparing the Kaua‘i Police Department’s Budget for Fiscal Year 2016-2017.</p>	
Chief’s Monthly Reports	<ol style="list-style-type: none"> 1. Administrative and Technical Bureau – Recruitment, Records Section and Training Reports 2. Fiscal Report 3. Investigative Services Bureau – General Crimes/Major Crimes Section, Special Focus Section and Vice Section 4. Office of Professional Standards 5. Bench Warrant Tracking 6. Patrol Services Bureau Monthly Activity and Traffic Reports 7. Community Oriented Policing Traffic and /Districting Reports for Līhu‘e, Kawaihau and Waimea 8. Chief’s Announcements and Pertinent Updates - None 	
Business KPC 2015-12	<p><u>Update on the Kaua‘i Police Department’s Budget for FY 2016-2017.</u></p> <p>Vice Chair Hertog stated she had nothing significant to report except for some comments that were made by a few councilmembers on how they appreciate the department’s innovative way of thinking on what to do with the school crossing guards’ positions.</p> <p>In reference to the four (4) marked police vehicles, Commissioner Bahouth asked if the purchases went through to which A/C Asher replied yes, and that he would like to call upon Assistant Chief Robert Gausephol to provide other</p>	

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	<p>details. A/C Gausephol explained that in addition to the purchase of the four (4) marked vehicles, the department received an approval from the County Council to purchase fifteen (15) additional marked vehicles.</p> <p>Commissioner Bahouth asked if the purchase would affect this year’s budget or the next fiscal year’s budget to which A/C Gausephol replied that it will affect the current year’s budget.</p> <p>Vice Chair Hertog asked if the purchases will put the department back on track to which A/C Gausephol replied that it would actually put the department ahead because of the current strategic plans which calls for the purchase of fifteen (15) new marked police vehicles.</p>	
<p>KPC 2016-06</p>	<p><u>Discussion and possible decision-making on identifying and proposing substantive and non-substantive changes to the Police Commission Rules of Administrative Practice and Procedure.</u></p> <p>Vice Chair Hertog was asked to give a history of how the proposal to change the current rules came about. She explained that Commissioner O’Connor had concerns about how outdated the current Police Commission rules were. And although many changes were made over the years, there were problems with typographical errors, rules being misplaced and out of sequence.</p> <p>She stated that by Commissioner Mince doing most of the heavy lifting, he was able to gather all of the old KPC rules from years past, including the rules from the other counties, and together they picked out the best things out of each one which they thought was lacking in the Commission’s current rules. For example, the Kaua‘i Police Commission’s current rules does include an authority and mission statement like the other Commissions. So to keep in line with the other Commissions, they want to include an authority and mission statement into the Commission’s current rules.</p>	

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	<p>She stated that the whole process will take at least several months to complete and it must undergo legal review by the County Attorney’s office followed by more discussion.</p> <p>Commissioner Mince added that as directed by Chair Iona, both he and Vice Chair Hertog took on the task and reviewed, page by page, the Commission’s current and past rules and compared them against the rules of the other three (3) Police Commissions from the other counties, and found, for the most part, the Commission’s rules are similar to the other islands.</p> <p>Commissioner Mince stated that in an effort to clarify the authority and mission statement, and to clearly state the Commissions’ powers, duties and responsibilities, the following recommendations will include:</p> <p style="text-align: center;"><u>Authority</u></p> <p><i>Article XI of the Kaua‘i County Charter specifics that there shall be a Police Department consisting of a Police Commission, a Chief of Police and the necessary staff. This article enumerates the powers, duties, and functions of the Police Commission and the Chief of the Police. As authorized by Article XI, the following rules, processes and policies have been promulgated by the Police Commission to carry out its responsibilities.</i></p> <p style="text-align: center;"><u>Mission Statement</u></p> <p><i>The Mission of the Kaua‘i Police Commission is to ensure that a competent Law Enforcement Professional occupies the position of the Chief of Police, and that the Chief of Police is in operation of an honest and effective police department.</i></p>	<p>Draft copies of the proposed rule changes were distributed to the Commissioners.</p>

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	<p>Commissioner Mince stated that another proposed rule change is to Rule 1 on Page 6, the word “Charter” was added along with a definition because that’s where the Commission’s authority comes from. In reference to Page 9, the proposed new rule change is to eliminate Rule 5-8, as it will now be covered under Rules 2-1 and 2-2 on Page 7 which reflects what the Commission’s duties are in relationship to the Chief.</p> <p>Commissioner Mince added that there are places in the current rules that refer to 90 days, but the Charter refers to 60 days, so to resolve that issue, they recommend going back to 60 days as stated in the Charter.</p> <p>Also, on Page 7 Rule 2-2 <u>Chief of Police</u>. The recommendation is to change the current verbiage to the following:</p> <p><i>“He/She shall make a monthly report at each Police Commission meeting to inform the Commissioners of significant incidents, issues, and opportunities involving the department. In addition, the Chief shall annually make a report to the Commission regarding the state of affairs and condition of the police department.”</i></p> <p>On Page 10, <u>Code of Conduct</u>. The recommendation is to eliminate section (d) for the simple reason that no one seems to know what the language means or what the rule is trying to convey.</p> <p>Commissioner Mince stated that majority of the Commission’s working business was found in the back under Rules 7, 8 and 9. So in an effort to make it more prominent, they took those rules and moved it up front under Rules 2, 3 and 4, and moved the procedural and administrative items (which was upfront) to the back of the rules.</p>	

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	<p>Also, under new proposed Rule 3-1, they inserted the word “Specific” to read as follows: <u>Specific Powers, Duties, and Responsibilities of the Police Commission</u>. By doing so, it will differentiate the rule from the previous rule which according to the Charter states <u>General duties, powers of the Commission</u>.</p> <p>On Page 13, (g), <u>Public Charges Against the Conduct of the Department or Any of its members</u>. They added the following new verbiage to define the word charges.</p> <p>1. <u>Charges Defined</u>. For purposes of this section the word “Charges” shall mean allegations filed with the Police Commission through citizen complaint process.</p> <p>Another proposed rule change is on Page 12, <u>Performance of Duty section (e)</u>. Commissioner Mince explained that this section relates to when an officer is charged criminally or civilly in which the officer is requesting that the County provide him/her with legal representation. He stated with the pending issue at hand, they decided to hold off from working on the section because they felt that the timing was not right.</p> <p>Commissioner Agarwal asked if it was possible to change the word “charges” to “allegation(s)”. Commissioner Mince stated that in his former life as police officer, the word “allegation(s)” was used quite often, but here, the word “charges” seems to be synonymous with KPD, so they felt it would be better to use the word “charges” to be consistent with KPD.</p> <p>Chair Iona stated that for those sitting in the audience, he would like to clarify that the purpose of the discussion is to clean up the Commission’s current rules to be in conformance with KPD, as well as the other Police</p>	

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	<p>Commissions within the state, and no decisions would be made today.</p> <p>Commissioner Adams asked, process wise, once the Commission comes to what it thinks will be the final document if it would have to go the Charter Review Commission for review to which Chair Iona replied no.</p> <p>Commissioner Mince explained that the Police Commission is not changing anything charter related; however, according to Deputy County Attorney Krafft, all proposed amendments to the rules must be Sunshine under the law. He added that after he is done with his presentation, he would like the Commissioners to take a draft copy home for further review and if they have any comments or questions to bring it with them to the next meeting for continued discussion.</p> <p>Deputy County Attorney Krafft commented that to expedite the discussion, the Commissioners could send their comments or questions via email to Vice Chair Hertog and Commissioner Mince.</p> <p>Commissioner Mince stated that another significant proposed new rule change is on Page 16, 5. <u>Charges made against the Chief of Police</u>. He stated that at this time, no verbiage will be presented until a determination is made by the Commission on whether the item should be added. He added that although the Kaua'i Charter grants the Commission power to hire and fire the Chief of Police, there is no provision in the Commission's current rules for disciplining the Chief, which is similar to the Maui Charter; however, the Maui Police Commission does has a provision in their rules on disciplining the Chief of Police.</p>	

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	<p>Chair Iona shared that he was quite surprised with the response he got from the Maui Police Commissioners when he asked them about the discipline rule in which they responded they didn't even know about it and questioned why it was even in their rules.</p> <p>Commissioner Bahouth asked if the Maui Commissioners have any knowledge of when it became a rule and the rationale behind it.</p> <p>Vice Chair Hertog stated that none of the Maui Police Commissioners seem to remember when the rule came into effect; all they know is that the rule has always been there.</p> <p>Chair Iona stated that because the Commission has no idea on when the ICA will make its ruling to determine the powers of the Mayor and the powers of the Police Commission, it could benefit the Commission to have a provision in its own rules in case something comes up, then the Commission will be prepared on what it can do on disciplining the Chief of Police.</p> <p>Commissioner Mince stated that also on Page 16, they added a new section on <u>Findings</u>. He explained that in the Commission's current rules, there is no section on complaint findings, nor is it memorialized anywhere in the Commission's documents, and so to mirror the findings by the Kaua'i Police Department, they decided to include it into the Commission's rules.</p> <p>On Page 18, they recommend renumbering Rule 8 to Rule 4 <u>Selection Process for the Chief Police</u> which will include the following new verbiage:</p> <p><i>New Rule 4-1 <u>General Powers of Appointment</u>. The Police Commission shall appoint the Chief of Police. In no event shall the Commission appoint an applicant for the position of the Chief of Police to act as interim or acting</i></p>	

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	<p><i>Chief, solely for the purpose of permitting the applicant to obtain the necessary qualifications for the position of the Chief of Police.</i></p> <p><i>New Rule 4-2 <u>Qualifications for Police Chief</u>. <u>Qualifications for the Police Chief</u>. Section 11.04 of the Kaua‘i County Charter states the <u>minimum</u> qualifications for the Chief of Police to be: Five years of training and experience in law enforcement, at least three of which shall be in a responsible, administrative capacity. In addition to the <u>minimum</u> qualifications set by the county charter, the Police Commission determines that a successful applicant for Chief of Police shall:</i></p> <ul style="list-style-type: none"> <i>• Meet the residency requirements specified in Hawai‘i Revised Statutes Section 78-1.</i> <i>• Be eligible to become a peace officer in the State of Hawai‘i.</i> <i>• Have the ability to meet the Minimum Qualifications, perform the additional duties, and possess the knowledge, skills and abilities set forth in Appendix 4-A of these rules.</i> <p>Commissioner Mince then stated that in the Commission’s current rules, there seems to be no linkage between the selection of the Police Chief and Appendix A (job description for the Chief of Police), so in order to link the two, they are recommending placing Appendix (A) under new Rule 4 and re-name it Appendix 4-A.</p> <p>Chair Iona thanked Commissioners Hertog and Mince for all their hard work and he encouraged the Commissioners to read the entire draft document and send their comments to Vice Chair Hertog and Commissioner Mince for continued discussion at the next meeting.</p>	

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	With no further discussion, Chair Iona moved onto agenda item KPC 2016-07.	
KPC 2016-07	<p><u>Discussion on the Kaua‘i Police Department’s initiative to create a Crisis Intervention Team to deal with the overarching challenges police face dealing with mental health issues.</u></p> <p>Chair Iona stated based on his conversation he had with Executive Police Chief Michael Contrades, Kaua‘i seems to be leading the charge in getting the officers the necessary training on how to deal with the mentally challenged.</p> <p>Commissioner Agarwal stated that mental health does not only affect the police departments, it affects the entire community; therefore, the State and County should combine efforts and provide the necessary funding to cover the cost of training these officers who are charged to deal with it.</p> <p>Vice Chair Hertog stated that the Maui Police Department was the first department to implement the program which turned out to be a success because they now have the tools to talk an individual down instead of using force.</p> <p>With no further comments, Chair Iona moved onto the agenda item KPC 2016-08.</p>	
KPC 2016-08	<p><u>Recap of the 2016 State of Hawai‘i Police Commissioners’ Conference that was held on March 30-31, 2016, at the Makena Beach and Golf Resort on the island of Maui.</u></p> <p>Vice Chair Hertog reported that the presentation she thought stood out the most was the presentation on Consent Decree by Keynote Speaker Florence</p>	

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	<p>Nakakuni, United States first female attorney. Another worth mentioning was the presentation on CSI Camp by Anthony Earles, MPD’s Police Evidence Specialist and student intern Jackie Kapu.</p> <p>Commissioner Bahouth stated that from what he understands, next year’s conference will be hosted by the Kaua‘i Police Commission, which he thinks will be a great opportunity to have some pre-work done prior to going into the meeting with the other Commissions to try to set-up a better format instead of having to decide on things at the last hour; common things such as working alongside the other Commissions on the different charters.</p> <p>With no further discussion, Chair Iona moved onto the next agenda item.</p>	
KPC 2016-09	<p><u>Communication dated April 5, 2016 from Police Chief Darryl Perry to Boards and Commissions Administrator Jay Furfaro, commending Police Commissioners: Chair Charles C.C. Iona, Vice Chair Mary K. Hertog, and Gerald “Chip” Bahouth for working diligently with the command staff to support and make recommendations towards the Kaua‘i Police Department’s initiative in crafting the budget for fiscal 2016-0217.</u></p> <p>Chair Iona called for a motion to receive agenda item KPC 2016-09.</p>	<p>Commissioner Adams moved to receive agenda item KPC 2016-09. Commissioner Bahouth seconded the motion. Motion carried 6:0</p>
KPC 2016-10	<p><u>Copy of the Maui Police Commission Regular Open Session Meeting Minutes of February 17, 2016.</u></p> <p>Chair Iona called for a motion to receive agenda item KPC 2016-10.</p>	<p>Commissioner Adams moved to receive agenda item KPC 2016-10 for the record. Vice Chair Hertog seconded the motion. Motion carried 6:0.</p>
KPC 2016-11	<p><u>Copy of the Big Island Police Commission Regular Open Session Meeting Minutes of January 22, 2016.</u></p> <p>Chair Iona called for a motion to receive agenda item KPC 2016-11.</p>	<p>Vice Chair Hertog moved to receive agenda item KPC 2016-11 for the record. Commissioner Mince seconded the motion. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
Announcements	<p>Next regular meeting – Friday, May 27, 2016, at 9:00 a.m. at the Mo`ikeha Building, Meeting Room 2A/2B. Executive Session to follow.</p> <p>Chair Iona asked Vice Chair Hertog to cite the Hawai'i Revised Statutes to bring the Commission into Executive Session.</p>	
Executive Session ES-33	<p>At 9:37 a.m. Vice Chair Hertog cited the Hawai'i Revised Statutes.</p> <p><u>Pursuant to the Hawai'i Revised Statutes §92-4 and §92-5 (a) (4), the purpose of this Executive Session is for the Commission to consult with its attorney as to the powers, duties, privileges, immunities, and liabilities as they may relate to a Declaratory Action to determine the powers of the Mayor and the powers of the Police Commission. (On-going)</u></p>	
ES KPC 2016-007	<p><u>Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to approve the Executive Session minutes of March 18, 2016, and to consult with its attorney on issues pertaining to the Commission's powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.</u></p>	
ES KPC 2016-008/Complaint No. KPC 2016-003	<p><u>Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to dismiss, or discipline of an employee or officer of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission's and the County's powers, duties, privileges, immunities, and/or liabilities as they may relate to the following agenda item:</u></p> <p><u>ES KPC 2016-008/Complaint No. KPC 2016-003:</u> <u>Pursuant to Hawai'i Revised Statutes §92-4, §95- (a) (1), (2), (4) and (5), the purpose of this Executive Session is for the Commission to consider a request from Assistant Chief Roy Asher that legal representation be provided to him</u></p>	

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	<p><u>by the County of Kaua'i relating to Civil No. 15-1-00153, and to consult with its attorney on issues pertaining to the Commission's and the County's powers, duties, privileges, immunities and/or liabilities.</u></p> <ul style="list-style-type: none"> • <u>Attachment - Confidential legal opinion dated April 11, 2016 from Deputy County Attorney Mahealani Krafft to Chair Charles C.C. Iona regarding scope of employment issues and appointment of counsel when considering a request for legal representation and to assist the Commission with the execution of its responsibilities.</u> 	
ES KPC 2016-009	<p><u>Pursuant to the Hawai'i Revised Statutes §92-4, §92-5 (a) (4), the purpose of this Executive Session is for the Commission to consult with its attorney on issues pertaining to the Commission's and the County powers, duties, privileges, immunities and/or liabilities as it relates to a communication dated April 13, 2016, regarding an inquiry on the Police Commission actions as they relate to a pending investigation of a major traffic accident that occurred in Kekaha at the Kikiaola Small Boat Harbor.</u></p>	
Enter into Executive Session	<p>Prior to going into Executive Session, Chair Iona advised the Commissioners that he will be taking the Executive Session agenda out of order to accommodate the presenters on some suppressing issues that must be dealt with first.</p> <p>With no objections from the Commissioners, Chair Iona called for a motion to enter into Executive Session.</p>	<p>Commissioner Agarwal moved to enter into Executive Session. Vice Chair Hertog seconded the motion. Motion carried 6:0</p> <p>At 9:42 a.m. the Commission entered into Executive Session.</p>
Return to Open Session to ratify the actions taken in Executive Session	<p>At 10:55 a.m. the Commission reconvened in Open Session. Chair Iona called for a motion to ratify the actions taken by the Police Commission in Executive Session.</p>	<p>Vice Chair Hertog moved to ratify the actions taken in Executive Session for the following agenda items. Commissioner Bahouth seconded the motion. Motion carried 6:0</p> <p>ES-33: No current updates (On-going)</p>

SUBJECT	DISCUSSION	ACTION
		<p>ES KPC 2016-007: Motion carried 6:0 to approve the Executive Session meeting minutes of February 26, 2016.</p> <p>ES KPC 2016-008/Complaint No. KPC-003: Motion carried 6:0 to grant legal presentation for Assistant Chief Roy Asher, relating to <u>Civil No. 15-1-00153.</u></p> <p>ES KPC 2016-009: Motion carried 6:0 to send the communication dated April 13, 2016 to the Kaua'i Police Department as an informational piece.</p>
Adjournment	With no further business to discuss, Chair Iona called for a motion to adjourn the meeting.	<p>Commissioner Adams moved to adjourn the meeting. Commissioner Bahouth seconded the motion. Motion carried 6:0</p> <p>At 10:55 a.m. the meeting adjourned.</p>

Submitted by: _____
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
Charles C.C. Iona, Chair

☒ Approved as circulated on May 27, 2016
☐ Approved as amended. See minutes of _____ meeting.